

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	CASE NO. 16-40401-btr
	§	
EXIOM SITE SERVICES, LLC,	§	CHAPTER 7
	§	
DEBTOR.	§	

**MOTION OF BALFOUR BEATTY CONSTRUCTION, LLC
FOR ORDER MODIFYING AUTOMATIC STAY PURSUANT TO
11 U.S.C. §§ 105(a) AND 362 (WITHOUT WAIVER OF 30-DAY HEARING)**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS AWRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TEXAS AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED AND THE COURT MAY ENTER THE ATTACHED AGREED ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

Balfour Beatty Construction, LLC (BBC) by and through its undersigned counsel, hereby move this Court for entry of an Order Modifying Automatic Stay in accordance with 11 U.S.C. §§ 105(a) and 362 and Bankruptcy Rule 4001(a) (the “Motion”). In support thereof, BBC states as follows:

I. Jurisdiction and Venue

1. On March 2, 2016 (the “Petition Date”), Exiom Site Services, LLC d/b/a Southern Star Excavations and Demolition (the “Debtor”) filed a voluntary petition for relief

under chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), with the United States Bankruptcy Court for the Eastern District of Texas (Sherman Division) (the “Court”).

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core-proceeding under 28 U.S.C. §§ 157(b)(2)(G).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. Background

4. BBC, as general contractor, contracted with the Debtor, as sub-contractor, to perform work on a certain construction project known as The Dallas Midtown Lofts (the “Project”) pursuant to a written construction agreement. Commodore Development, LLC is the owner of the Project (the “Project Owner”). The Debtor has not paid certain of its lower-tier subcontractors and suppliers (the “Subcontractors and Suppliers”) that provided service and/or materials on the Project. As of the date of this Motion, the outstanding known claims of the Debtor’s Subcontractors and Suppliers are as follows:

Buyers Barricades	\$6,456.58
White Star Equipment	\$18,902.34
Bane Equipment	\$38,949.89
Ferguson Enterprises	\$239,526.05
Magnum Surveying	\$6,105.00
Aggregates Now	\$49,083.23
Tarango Trucking	<u>\$42,005.00</u>
Total	\$401,028.09

Counsel for BBC has provided the Chapter 7 Trustee with copies of the Subcontractor and Supplier invoices, and such invoices will be provided to any other party upon request.

5. The Subcontractors and Suppliers may hold certain rights, including but not limited to lien rights and/or payment bond claims on the Project.

6. The Debtor's Subcontractors and Suppliers have asserted claims against BBC and the Project Owner, and the payment bond sureties on the Project on which the Debtor was performing work for BBC.

7. Texas statutory and common-law provides certain rights to unpaid lower-tier suppliers and subcontractors, including payment of "trust funds" held by a general contractor for the benefit of such unpaid lower-tier suppliers and subcontractors.

8. BBC and the Project Owner desire to pay Debtor's Subcontractors and Suppliers in return for a release of claims and liens in connection with the Project.

9. As a result of its bankruptcy, the Debtor is unable to complete its obligations under its agreement with BBC. The continued delay of payment to the Subcontractors and Suppliers jeopardizes the completion date of the Project and increases the risk of damage to the Project Owner, BBC and countless other parties connected with the Project.

III. Relief Requested

10. Cause exists to lift the automatic stay so that the BBC and the Project Owner may exercise their rights and remedies, including promptly terminating the construction contract with the Debtor and satisfying the outstanding claims of the Subcontractors and Suppliers. Bankruptcy Code Section 362(d)(1).

11. For the reasons stated herein, BBC seeks relief from the automatic stay under Bankruptcy Code Section 362 so that the construction contract may be formally terminated and BBC and the Project Owner may exercise their rights and remedies, including by satisfying the

outstanding claims of the Subcontractors and Suppliers in exchange for a release of claims and liens.

10. Counsel for BBC and the Trustee have discussed the basis for the Motion; while the Trustee could not agree to the relief requested prior to reviewing the invoices, BBC does not believe that this Motion will be opposed by any of the Debtor's creditors.

WHEREFORE, PREMISES CONSIDERED, BBC requests that the Court modify the Automatic Stay as requested herein, and grant such other and further relief in favor of BBC as the Court deems just and appropriate.

Respectfully submitted,

McGUIRE, CRADDOCK & STROTHER, P.C.

By: /s/ David L. Woods [03/11/16]

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing pleading was served by electronic mail, facsimile and/or depositing in the United States Mail, postage prepaid, or as otherwise indicated, on the 11th day of March 2016 on the following:

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